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THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

AMANDA E. LATHAM,	)	Case No. <u>'14CV2755 DMS KSC</u>
Plaintiff,	)	
vs.	)	<b>NOTICE OF REMOVAL OF</b>
	)	<b>ACTION TO THE UNITED</b>
THE PRUDENTIAL INSURANCE	)	<b>STATES DISTRICT COURT</b>
COMPANY OF AMERICA; and DOES	)	(San Diego County Superior Court
1-10, inclusive,	)	Case No. 37-2014-00035088-CU-CI-
	)	NC)
Defendants.	)	Complaint Filed: October 16, 2014

**TO THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN  
DISTRICT OF CALIFORNIA, AND TO PLAINTIFF, AMANDA E.  
LATHAM, AND HER ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on November 19, 2014, Defendant THE PRUDENTIAL INSURANCE COMPANY OF AMERICA ("Prudential"), contemporaneously with the filing of this Notice, is effecting the removal of the above-referenced civil action, Case No. 37-2014-00035088-CU-CI-NC, from the Superior Court of the State of California for the County of San Diego, to the United States District Court for the Southern District of California, based upon diversity jurisdiction pursuant to 28 U.S.C. §§ 1332(a)(1), 1332(c)(1), and 1441. The suit is

one of a civil nature over which the United States District Court has original jurisdiction.

This removal is based on the following grounds:

**I. TIMELINESS AND PROCESS.**

1. On October 16, 2014, Plaintiff AMANDA E. LATHAM (“Plaintiff”) commenced this action by filing a Complaint in the Superior Court of the State of California for the County of San Diego, entitled *Amana E. Latham v. The Prudential Insurance Company of America; and DOES 1-10, inclusive*, designated Case No: 37-2014-00035088-CU-CI-NC.

2. On October 24, 2014, Prudential was served with a copy of the Summons and Complaint. No prior pleading or paper had been served on Prudential. A true and correct copy of the Summons, Complaint, and all other process, pleadings, and orders served on Prudential are attached hereto and incorporated herein as Exhibit “A.” Prudential has been served with no other process, pleadings, or orders.

3. On November 13, 2014, Prudential filed an Answer to Plaintiff’s Complaint in the Superior Court of the State of California for the County of San Diego. A true and correct copy of the Answer is attached hereto and incorporated herein as Exhibit “B.”

4. Removal is timely under 28 U.S.C. § 1446(b) because Prudential has filed this Notice of Removal within one (1) year of commencement of this action, and within thirty (30) days of having first received the Summons and Complaint. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (holding that “a named defendant’s time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, ‘through service or otherwise,’ after and apart from service of the summons ...”).

**II. JOINDER.**

5. There are no defendants that are required to join in this removal. All other defendants are fictitiously named and need not be considered for purposes of removal. 28 U.S.C. § 1441(a).

**III. JURISDICTION: DIVERSITY JURISDICTION.**

6. This action has been removed to this Court based upon diversity jurisdiction pursuant to 28 U.S.C. §§ 1332(a)(1), 1332(c)(1) and 1441, in that the suit has been brought between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, as set forth more fully below. The suit is one of a civil nature over which the United States District Court has original jurisdiction.

**A. Citizenship of Plaintiff.**

7. Prudential is informed and believes, and on that basis alleges, that Plaintiff “is, and at all relevant times was, a resident and citizen of the State of California,” as alleged in Plaintiff’s Complaint.” (Complaint ¶ 4.)

**B. Citizenship of Prudential.**

8. Prudential is, and at all times was, a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in Newark, New Jersey. Accordingly, at the time of the filing of this Notice of Removal, Prudential was and is a citizen of the State of New Jersey. (Complaint, ¶ 5.)

**C. Doe Defendants.**

9. Does 1 through 10, named by Plaintiff as defendants in her Complaint, should be disregarded for the purposes of determining whether removal is proper on diversity grounds. 28 U.S.C. § 1441(b)(1) (“[i]n determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded”).

**D. Amount in Controversy.**

10. Plaintiff has not specified the amount of damages she is seeking through her Complaint. Plaintiff's failure to plead a specific amount of damages in her Complaint should be construed in favor of Prudential, supporting a finding that the minimum jurisdictional threshold has been met. *See Bosinger v. Phillips Plastic Corp.*, 57 F.Supp.2d 986, 989 (S.D. Cal. 1999) ("as such evidence [to show the amount in controversy exceeds \$75,000.00] may not always be available to a removing defendant, to require such proof might defeat removal in an instance where a plaintiff declined to plead a specific amount of damages and a defendant could not readily ascertain the approximate amount of damages a plaintiff seeks within 30 days. Moreover, while it is for the Court to decide its own jurisdiction, the Court finds in plaintiff's silence, implicit support for Defendant's allegation as to the amount in controversy").

11. Plaintiff seeks recovery against Prudential for, among other things, disability benefits that she alleges she is entitled to under Group Policy number G-44959-CA (the "Plan"). (Complaint, ¶¶ 1-3, 8-11, 15, 22, 32, 34-37; Prayer for Relief, ¶ 1.) Plaintiff alleges that she became disabled and was eligible for benefits under the Plan on or about December 20, 2011 (Complaint, ¶ 15), and that Prudential has failed to pay benefits under the Plan after February 24, 2012. (Complaint, ¶¶ 22, 34-37). Plaintiff further alleges that she remains disabled and eligible for benefits. (Complaint, ¶ 32) Plaintiff further alleges that pursuant to "the terms of the Plan," if Plaintiff became disabled, Prudential was to "provide weekly Short Term disability benefits equivalent to 66.67% of her weekly earnings" for a "maximum of 12 weeks." (Complaint, ¶ 9; *see also* Exhibit "A" to the Complaint, Bates Stamp 000010). Plaintiff further alleges that pursuant to the "terms of the Plan," if Plaintiff became disabled, Prudential was to "provide monthly Long Term disability benefits equivalent to 67% of her monthly earnings" to Plaintiff's "Social Security Normal

1 Retirement Age.” (Complaint, ¶ 11; *see also* Exhibit “A” to the Complaint, Bates  
2 Stamp 000011).

3 12. The amount in controversy exceeds the \$75,000.00 jurisdiction  
4 threshold. 28 U.S.C. § 1332(a). Plaintiff was born in 1983 (currently age 31), and  
5 she claims to be entitled to “Long Term disability benefits” under the Plan through  
6 her “Social Security Normal Retirement Age,” *i.e.*, age 67. (Complaint, ¶ 11).  
7 Assuming for the purposes of this Notice that Plaintiff’s monthly benefit under the  
8 Plan is \$2,590.86, the amount of benefits at issue from February 24, 2012 to date is  
9 over \$80,000.00, thereby exceeding the \$75,000.00 jurisdictional threshold.

#### 10 **IV. NOTICE.**

11 13. Proper notice will be given this date to Plaintiff herein through her  
12 counsel of record, and to the Clerk of the Superior Court for the State of California,  
13 County of San Diego. A true and correct copy of the Notice is attached hereto as  
14 Exhibit “C” and by this reference incorporated as if set forth in full.

15 WHEREFORE, Prudential prays that this matter pending in the San Diego  
16 County Superior Court be removed to this Court.

17  
18 Dated: November 19, 2014

MESERVE, MUMPER & HUGHES LLP  
Linda M. Lawson  
Patricia A. Ellis

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20  
21 By: /s/ Patricia A. Ellis

Patricia A. Ellis  
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THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA